

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Patrick O'Donnell, Committee Counsel

Small Claims and Limited Cases Subcommittee
Hon. Esther Castellanos, Chair
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DATE: September 11, 2006

SUBJECT: Small Claims Motion Procedure (adopt Cal. Rules of Court, rule 3.2107)
(Action Required)¹

Issue Statement

The Small Claims Act identifies many motions that a party may make either before or after the small claims trial. The act is sometimes unclear on the procedure to be followed for giving notice of the motion, on whether there is an opportunity to respond, and on whether the court must conduct a hearing before ruling on the motion. As a result, some small claims forms developed by the Judicial Council have filled in these gaps with procedure not necessarily articulated in the act or the California Rules of Court. Procedure may also not be consistent from form to form. This issue came to light while the advisory committee was revising the current Judicial Council small claims motion forms into a plain-language format.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2007, adopt rule 3.2107 of the California Rules of Court to provide a uniform procedure for (1) giving notice of a request for a court order and (2) deciding the request before and after the small claims trial.

¹ This rule was numbered as proposed rule 1707 when it was circulated for comment. However, at the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration. For the proposed rule to be consistent with the newly reorganized California Rules of Court, it is now numbered as rule 3.2107.

The text of the proposed rule follows on page 4.

Rationale for Recommendation

When reviewing the current Judicial Council small claims motion forms for conversion into plain language, the committee discovered that some forms provide procedures for motions on which the Small Claims Act and the California Rules of Court are silent. The responsibility for serving notice of the motion, the opportunity to respond before the court rules on the motion, and the hearing requirement are not always spelled out for a particular motion.

To further the act's small claims policies of providing a judicial forum accessible to all parties directly involved in the dispute and of resolving disputes "expeditiously, inexpensively, and fairly,"² the committee conducted an extensive review of all motions authorized under the act, categorized their procedures, and developed a proposed rule of court that would apply consistently to all small claims motions filed before and after trial.³ The rule would be adopted under Judicial Council authority to develop small claims practice and procedure consistent with the Small Claims Act. (See Code Civ. Proc., §116.920.)

Pretrial motions

Under rule 3.2107(a), the party requesting the motion would be required to mail or personally deliver notice of the motion to the other parties, and the other parties would have an opportunity to answer or respond to the request before or at the small claims hearing. The court would have an opportunity to hear all grievances at the upcoming small claims trial, thereby providing a procedural safety net.

Posttrial motions

Under rule 3.2107(b), motions made after notice of entry of judgment would be mailed by the clerk to provide an extra measure of assurance that notice of the motion is given to all parties. At this stage of the proceedings a losing party may try to change the outcome of the trial. Because there would no longer be an opportunity to contest the request at an upcoming trial, the rule would allow at least 10 days for a written response to be filed before the court rules on the request.

Under the rule, the court could decide whether a hearing is necessary to fairly resolve the matter. However, a hearing would be required on a plaintiff's motion to vacate the judgment if the plaintiff did not appear at the hearing. (See Code Civ. Proc., §116.720.) This requirement has been incorporated in proposed rule 3.2107. There are two motions in the act

² Code Civ. Proc., § 116.120(b).

³ A list of all pre- and posttrial motions identified in the act is attached at page 5.

that reference a hearing, but these hearings appear to be at the discretion of the court and are not, therefore, mandatory.⁴

Uniform procedure

The rule would provide a uniform procedural framework for the Judicial Council plain language request for court order forms that incorporate notice requirements in instructional prompts that help self-represented parties understand the process.⁵

Alternative Actions Considered

The committee could have continued to develop and revise new small claims motion forms by filling in procedural gaps on the forms themselves. However, the committee considered it desirable to develop a rule of court that would apply consistently to all small claims motions filed before and after trial.

Comments From Interested Parties

The proposed rule was circulated for statewide public comment in spring 2006. Eleven comments were received from small claims advisors, court staff attorneys, court executive officers, court clerks (including a small claims program manager), a small claims temporary judge, and the Orange County Bar Association. Eight commentators agreed with the proposal as drafted. Two commentators agreed with the proposal if modifications were made, and one disagreed with the proposal.

The committee agreed with the proposed postjudgment motion modification clarifying that the court may serve the request and include a scheduled hearing date as long as the hearing is scheduled after the 10-day period for answering the request. A court staff attorney objected to the proposal because there is no response form. However, the committee has prepared an optional response form, which is the subject of a separate report. In any event, the Small Claims Act permits parties to make an informal written request to the court. (Code Civ. Proc., § 116.130.) The committee did not agree with the objection that a neutral party should serve the papers because this would require statutory changes beyond the scope of the proposal. A chart summarizing the comments and the committee's responses is attached at pages 6–9.

Implementation Requirements and Costs

The proposed new rule does not impose any new requirements; rather, it is a synthesis of existing requirements embodied in statutes and forms that should make it easier to comply with the 11 statutory pretrial and posttrial motions identified in the Small Claims Act.

Attachments

⁴ Discretionary hearings mentioned in the act include (1) the defendant's request to vacate the judgment for lack of appearance (Code Civ. Proc. § 116.730), and (2) the defendant's request to vacate the judgment for improper service (Code Civ. Proc., § 116.740).

⁵ The plain-language forms that are the subject of a separate report have been drafted to incorporate the procedures of this proposed rule.

Rule 3.2107 of the California Rules of Court is adopted, effective January 1, 2007, to read:⁶

1 **Rule 3.2107. Request for court order**

2
3 **(a) Request before trial**

4
5 If a party files a written request for a court order before the hearing on the claim, the
6 requesting party must mail or personally deliver a copy to all other parties in the case.
7 The other parties must be given an opportunity to answer or respond to the request
8 before or at the hearing. This subdivision does not apply to a request to postpone the
9 hearing date if the plaintiff's claim has not been served.

10
11 **(b) Request after trial**

12
13 If a party files a written request for a court order after notice of entry of judgment, the
14 clerk must mail a copy of the request to all other parties in the action. A party has 10
15 calendar days from the date on which the clerk mailed the request to file a response
16 before the court makes an order. The court may schedule a hearing on the request,
17 except that if the request is to vacate the judgment for lack of appearance by the
18 plaintiff, the court must hold a hearing. The court may give notice of any scheduled
19 hearing with notice of the request, but the hearing must be scheduled at least 11
20 calendar days after the clerk has mailed the request.

⁶This rule was numbered as proposed rule 1707 when it was circulated for comment. However, at the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration. For the proposed rule to be consistent with the newly reorganized California Rules of Court, it is now numbered as rule 3.2107.

Small Claims Motions Identified in the Small Claims Act

Pretrial Motions

1. Code Civ. Proc., § 116.130(h) Written request, such as a letter, to the court for an order.
2. Code Civ. Proc., § 116.370 Venue or court location challenge.
(Defendant shall mail a copy to other parties; defendant does not have to appear at the *hearing*.)
3. Rule 3.2106 (formerly rule 1704) Venue challenge procedure.
Defendant not required to appear at *hearing* on venue challenge.)
4. Code Civ. Proc., § 116.390 Request to transfer claim to limited jurisdiction court.
(Defendant shall cause a copy to be personally delivered.)
5. Code Civ. Proc., § 116.560 Request to amend claim to correct defendant's name.
6. Code Civ. Proc., § 116.570 Request to postpone hearing date.
(Requesting party shall mail or personally deliver.)

Posttrial Motions

1. Code Civ. Proc., § 116.130(h) Written request, such as a letter, to the court for an order.
2. Code Civ. Proc., § 116.560 Request to amend judgment to correct defendant's name.
3. Code Civ. Proc., § 116.620 Motion for installment payments.
(Notice by clerk to all affected persons.)
4. Code Civ. Proc., § 116.630 Motion to amend party's name.
(Notice by clerk to all affected persons.)
5. Code Civ. Proc., § 116.710 Defendant motion to vacate judgment—defendant did not appear.
(Follow Code Civ. Proc., § 116.730 or § 116.740.)
6. Code Civ. Proc., § 116.720 Plaintiff motion to vacate judgment.
(Motion within 30 days after clerk mails notice of entry; “the clerk shall schedule *the hearing* no earlier than 10 days after the clerk has mailed written notice of the date, time, and place of the hearing to all parties.”)
7. Code Civ. Proc., § 116.725 Motion to correct clerical error in judgment or set aside judgment based on wrong law.
(Motion within 30 days after clerk mails notice of entry.)
8. Code Civ. Proc., § 116.730 Defendant motion to vacate judgment—defendant did not appear.
(Motion within 30 days after clerk mails notice of entry; “defendant shall appear at *any hearing* on the motion.”)
9. Code Civ. Proc., § 116.740 Defendant motion to vacate judgment for improper service.
(Motion within 180 days after discovery; “court *may order* enforcement of judgment suspended pending a *hearing* and determination of the motion.”)
10. Code Civ. Proc., § 116.850 Request of judgment debtor to enter satisfaction of judgment.
(Clerk shall enter if debtor establishes rebuttable presumption.)
11. Code Civ. Proc., § 116.860 Request to make payment to the court.
(Clerk shall notify judgment creditor when judgment satisfied.)

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Small Claims Motion Procedure
(adopt Cal. Rules of Court, rule 3.2107 [circulated as rule 1707])⁷

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Christine Copeland Staff Attorney Superior Court of California, County of Santa Clara San Jose	N	N	<p>1. Rule 3.2107(a) (circulated as rule 1707(a)) sounds like the moving party does the service; I think a neutral party at least 18 years old should do service; also, there's no form for responding party to complete.</p> <p>2. Rule 3.2107(b) (circulated as rule 1707(b)) response form does not exist.</p>	<p>Current motions identified in the Small Claims Act provide that the requesting party "mail or personally deliver a copy to each of the other parties to the action." (See e.g., CCP 116.370; 116.570(a)(3).) This suggestion may require statutory changes.</p> <p>The committee is developing response forms. (See proposed forms SC-105 and SC-108 in SPR06-21.) CCP 116.130 defines "motion" to include "an informal written request to the court, such as a letter." We assume that an informal written response is also allowed.</p>
2.	Ms. Tina Rasnow Senior Attorney Superior Court of California, County of Ventura Ventura	A	N	No comments.	No response required.

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3.	Ms. Julie M. McCoy President Orange County Bar Association Irvine	A	Y	No comments.	No response required.
3.	Ms. Diana Landmann Court Manager Superior Court of California, County of San Joaquin Stockton	A	N	All motions in small claims should be charged a fee, not just on a motion to vacate. If a hearing is not necessary then an ex parte fee should be charged.	Currently, the committee is proposing a \$10 postponement fee after the first request. (See LEG06-04.) The commentator's suggestion that additional fees be charged is outside the scope of this invitation to comment because it would require statutory changes.
4.	Ms. Janet Garcia, Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No comments.	No response required.
5.	Ms. Tressa S. Kentner and Ms. Debra Meyers Court Executive Officer and Chief of Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino	AM	N	The time for opposition and a hearing on a demurrer is not set out. Therefore, the time goes to the normal time in non-small claims civil cases, which can affect the summary nature of a small claims action. We would suggest adding to this proposal time periods for	The committee was unable to respond to this comment. The comment may have been misplaced because there is no opportunity to challenge the pleadings in small claims court. The proposed rule applies only in small claims court.

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				demurrers.	
6.	Ms. Cindy Avila Supervising Legal Clerk II Superior Court of California, County of Stanislaus Modesto	A	N	We would like to see this approved.	No response required.
7.	Ms. Cheryl Kanatzar Deputy Executive Officer Superior Court of California, County of Ventura Ventura	A	Y	No comment.	No response required.
8.	Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego	AM	Y	The last sentence of 3.2107(a) (circulated as rule 1707(b)) should be clarified to indicate the court may immediately set a hearing upon receipt of the request for a court order and that all parties must appear at that hearing to present their position on the subject request.	<p>This commentator made similar comments on the forms proposals. See SPR06-21, No. 9. Only a request to vacate the judgment for lack of appearance by the plaintiff requires a hearing (CCP 116.720), which has been incorporated in the rule. All other hearings are discretionary.</p> <p>The committee agreed to amend 3.2107(a) (circulated as rule 1707(b)) clarifying that the court may give notice of any scheduled hearing with the notice of request, but may not schedule the hearing sooner than 11 days after mailing the request. This can save the court a second mailing.</p>

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9.	Ms. Kim Basket Traffice Referee/Small Claims Judge Pro Tem Superior Court of California, County of Santa Cruz Santa Cruz	A	Y	No comment.	No response required.
10.	Ms. Pam Moraida Civil/Small Claims Program Manager Superior Court of California, County of Solano Fairfield	A	N	No comment.	No response required.